IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1146 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

GANPATSINH LAXMANSINH PARMAR

Appearance:

1. Criminal Appeal No. 1146 of 1999

MR KT DAVE,APP for Petitioner No. 1

MR BS SUPEHIA for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 13/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. State of Gujarat has preferred this appeal for enhancement of sentence of the respondent Ganpatsinh L.Parmar who is convicted by the learned Addl. Sessions Judge, Panchmahals at Godhra in Sessions Case No. 103 of 1998 for offences punishable under sections 363, 366 of IPC and sentenced to suffer R.I. for three years and to pay a fine of Rs. 500/-, in default, to undergo R.I. for six months. He is also convicted for an offence punishable under section 376 of IPC and is sentenced to suffer R.I. for five years and to pay a fine of Rs.500/-, in default, to undergo R.I. for one year. The learned trial judge ordered both the sentences to run concurrently.

2. As can be seen from the charge Ex.2 levelled against the respondent, the respondent had enticed and taken away the prosecutrix Induben who was a student at the relevant point of time and was aged less than 16 years, from the lawful guardianship of the complainant with an intention to have sexual intercourse and had committed rape against her will.

3. The learned trial judge, after appreciating the evidence led by the prosecution, convicted the respondent as stated above. It is stated that the respondent has not preferred any appeal against the conviction and sentence and has, thus, accepted the judgment of the trial court.

4. In the circumstances, the only question which is required to be decided in this appeal is about the adequacy of sentence. Learned APP Mr. KT Dave appearing for the State has stated before us that the respondent was arrested on 5.2.1998 and was released on 5.3.2002 after completion of sentence. From the record, it appears that the respondent has remained in jail right from the date of his arrest till his release except for a period of one week from 17.10.1998 to 26.10.1998 when he was released on temporary bail. Thus, in substance, the respondent has undergone sentence with remission.

5. A contradiction has been brought out in the evidence of the prosecutrix Induben, PW 5 Ex.19 to the effect that she, in her police statement, had stated that on 16.1.1998, she had gone to the school with her sister and brother and from there, she had gone away with the respondent with whom she was in love, at her own free will and thereafter had stayed with him at Ahmedabad.

6. From this, it is clear that the prosecutrix and the respondent were in love with each other and the prosecutrix was a willing partner to the act committed by

the respondent. The respondent was convicted as the prosecutrix was minor. Taking this fact into account, we feel that no useful purpose will be served by allowing the appeal preferred by the State for enhancement of sentence and by again sending the respondent in jail when he is already released after completion of awarded sentence.

7. We, therefore, see no merit in this appeal and the same is dismissed.

(Kshitij R.Vyas,J.)

(Ravi R.Tripathi,J.)

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